

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FREDERICK GREEN,

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

Civil Action File No. _____

COMPLAINT

COMES NOW FREDERICK GREEN and files his Complaint against the Defendant, stating as follows:

Parties, Jurisdiction and Venue

1.

Frederick Green is a citizen of the United States and resident of the State of Georgia. He resides at 1317 Thurgood Street, Atlanta, GA 30314.

2.

On March 19, 2020, Jonathan Moutrey (“Moutrey”) was employed by the United States Postal Service (“USPS”) and was operating a postal delivery truck on McFarland Parkway at or near its intersection with Trotters Parkway, Forsyth County, in the course and scope of his employment with the USPS.

3.

This is an action arising out of a traffic crash that occurred on March 19, 2020, involving Frederick Green and a postal truck operated by Mr. Moutrey and the USPS.

4.

This action is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.* (hereinafter “the FTCA”).

5.

The USPS is an independent establishment of the executive branch of Defendant United States of America. 39 U.S.C. § 201. The USPS is within the FTCA.

6.

In accordance with Fed.R.Civ.P. 4(i), Defendant United States of America (referred to herein as “USPS”) was properly served with process by service of the Summons and Complaint sent by registered or certified mail to the Civil Process Clerk, Office of the United States Attorney, 1800 Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303.

7.

In accordance with Fed.R.Civ.P. 4(i), the Attorney General of the United States was properly served with process by service of the Summons and Complaint sent by registered or certified mail to the Attorney General of the United States, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

8.

By virtue of the facts set forth in this Complaint, this Court has jurisdiction pursuant to 28 U.S.C. § 1346.

9.

Venue for this action is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1402.

10.

On or about July 27, 2020, an Administrative Claim form was sent by overnight mail to the USPS in accordance with the FTCA for \$234,363.50.

11.

Mr. Green's Administrative Claim was properly and timely presented to the USPS.

12.

More than six months has passed since the filing of Mr. Green's Administrative Claim with the USPS.

13.

To date, the USPS has not responded to the claim in accordance with 28 U.S.C. § 2675.

14.

This action is timely filed.

15.

All conditions precedent to the filing of this action have been met.

Facts

16.

On March 19, 2020, at approximately 5:41 p.m. Mr. Green was traveling southbound on McFarland Parkway in Forsyth County, Georgia.

17.

At that same time and place, Mr. Moutrey, while driving a USPS truck within the course and scope of his employment with USPS was also traveling southbound on McFarland Parkway.

18.

At the time, Mr. Moutrey was driving a 2001 Grumman mail delivery truck owned and operated by the USPS.

19.

Suddenly, and without warning, Moutrey unlawfully attempted a left lane change. In so doing, he recklessly drove into the path of Mr. Green's vehicle, causing a collision between the vehicles. Mr. Moutrey was cited at the scene for making an improper lane change in violation of Georgia Statute O.C.G.A. § 40-6-123.

20.

As a direct result of Mr. Moutrey's negligence, Mr. Green suffered injuries which required medical treatment.

21.

Mr. Green incurred the following reasonable and necessary medical expenses:

Emory Clinic:	\$ 223.00
Barbour Orthopedic	\$ 10,293.42
Emory University Hospital	\$ 845.00
Georgia Injury and Spine Center	\$ 4,275.00

22.

Mr. Green has suffered significant past pain, suffering and mental anguish and will continue to experience significant future pain, suffering and mental anguish.

23.

Mr. Green has suffered a loss of his capacity to earn a living.

24.

All the above-referenced damages were proximately caused by the negligence of Mr. Moutrey.

Count One - Negligence

25.

Plaintiff reasserts and re-alleges the allegations contained in paragraphs one (1) through twenty-four (24) above as if fully set forth herein.

26.

At all times material hereto, Mr. Moutrey and USPS owed Plaintiff a duty to operate his vehicle in an ordinary careful and non-negligent manner and to follow the laws of the State of Georgia and the rules of the road.

27.

While in the course and scope of his employment with the USPS, Mr. Moutrey breached those duties and was negligent in at least the following ways:

- a. He was driving recklessly in violation of Georgia Statute O.C.G.A. §40-6-390 which is negligence *per se*;
- b. He failed to keep a proper and diligent lookout;
- c. He failed to keep proper control of his vehicle;
- d. He failed to take reasonable steps to avoid the collision at issue;
- e. He failed to properly signal when changing lanes in violation of Georgia Statute O.C.G.A. § 40-6-123 which is negligence *per se*;
- f. He was otherwise negligent by failing to use ordinary care and by failing to employ prudent conduct while driving in violation of Georgia Statute O.C.G.A. § 40-6-241 which is negligence *per se*;

28.

As a direct result of the negligence Mr. Moutrey and USPS, Mr. Green endured personal injury and pain and suffering, both physical and emotional.

29.

By virtue of the negligence of Mr. Moutrey and USPS, Defendant USA is liable to Mr. Green for the damages resulting from that negligence, including, but not limited to, hospital bills, medical bills, lost wages, loss of earning capacity, mental anguish, and conscious pain and suffering under a theory of agency and *respondeat superior*.

Count Two - Negligent Entrustment and Supervision

30.

Plaintiff hereby reasserts and re-alleges the allegations contained in paragraphs one (1) through twenty-nine (29) above as if fully set forth therein.

31.

As Mr. Moutrey's employer, Defendant had a duty to supervise Mr. Moutrey in a reasonably prudent fashion, as well as a duty not to entrust a motor vehicle to a person who is incompetent to drive by reason of physical or mental condition, or by a known habit of recklessness.

32.

On the day of the wreck, Defendant negligently entrusted the postal truck to Mr. Moutrey.

33.

Defendant knew or should have known that Mr. Moutrey was not qualified, not properly trained, and/or otherwise not safe to drive.

34.

Defendant as otherwise negligent in supervising Mr. Moutrey and entrusting Mr. Moutrey with a USPS postal delivery truck.

35.

As a direct result of Defendant's negligent entrustment and negligent supervision of Mr. Moutrey, Mr. Green suffered damages, including hospital bills, medical bills, lost wages, loss of earning capacity, mental anguish, and conscious pain and suffering, both physical and emotional.

36.

By virtue of Defendant's negligent entrustment and negligent supervision of Mr. Moutrey, Defendant is liable to Mr. Green for all the damages resulting from that negligence, including but not limited to hospital bills, medical bills, lost wages, loss of earning capacity, mental anguish, and conscious pain and suffering.

WHEREFORE, Plaintiff requests the following:

- a. That Defendant be served with process;

b. That Plaintiff, Frederick Green have and recover from Defendant USA an amount shown by the evidence to fully compensate for his injuries, including but not limited to hospital bills, medical bills, lost wages, loss of earning capacity, mental anguish, and conscious pain and suffering; and

c. That Plaintiff have such other and further relief to which he may be entitled as determined at the trial of this case.

Dated this 4th day of March 2021.

HAMILTON FIRM, LLC

/s/ Richard P. Hamilton

Richard P. Hamilton

GEORGIA BAR NUMBER 321274

ATTORNEY FOR PLAINTIFF

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